IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE R.BASANT

MONDAY, THE 19TH FEBRUARY 2007 / 30TH MAGHA 1928

Crl.MC.No. 691 of 2006()

CC.1769/2003 of JUDL.MAGISTRATE OF FIRST CLASS-I, MUVATTUPUZHA

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PETITIONER: ACCUSED

P.A.DEVASSIA, AGED 50 YEARS,
W/O.AUGUSTHY, PARAKANDATHIL HOUSE,
ELANJI KARA, ELANJI TALUK, MUVATTUPUZHA TALUK.

BY ADV. SRI.C.C.THOMAS

RESPONDENTS: COMPLAINANT & STATE

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1. GEORGEKUTTY PETER, AGED 39 YEARS,
S/O.K.J.PATHROSE, KUTHIRAVELIL HOUSE, ELANJI P.O.,
ERNAKULAM DISTRICT.

2. STATE OF KERALA, REPRESENTED BY
PUBLIC PROSECUTOR, HIGH COURT OF KERALA,
ERNAKULAM.

BY ADV. PUBLIC PROSECUTOR SRI.S.U. NAZAR
SRI.K.JAGADEESCHANDRAN NAIR

THIS CRIMINAL MISC. CASE HAVING BEEN FINALLY HEARD ON 19/02/2007, THE COURT ON THE SAME DAY PASSED THE FOLLOWING:

R. BASANT, J.

CRL.M.C.NO. 691 OF 2006

Dated this the 19th day of February, 2007

ORDER

The petitioner is the accused in a prosecution under Sec.138 of the N.I. Act. To the notice of demand, he had sent a reply wherein he raised a specific contention that the cheque was issued by him as security after entering the amounts to be paid in figures as Rs.15,000/-. Later, in the course of trial when the complainant was examined, the same stand was taken by the petitioner in cross-examination. Subsequently, in his 313 statement and later when he was examined under Sec.315 of the Cr.P.C., the same stand was reiterated by the accused. Thereafter, he filed an application under Sec.254(2) of the Cr.P.C. to forward the cheque to the expert for examination. The short, crucial and the vital contention raised is that the figure “1” written by him has been altered as “6” and the figure “2” has been written in front of “Rs.15,000/-”, after altering “1” as “6”. The name of the payee and the amount in words were not entered by him,

it was contended. The cheque now is for the amount of Rs.2,65,000/-.

2. This application was opposed. It was contended that the attempt is only to protract the proceedings. Reliance was placed on the decision in **Francis v. Pradeep** (2004 (2) KLT 1080). The learned Magistrate exercised his discretion against the petitioner and held that the cheque need not be sent to the expert. According to the learned Magistrate, mere perusal of the cheque makes it very evident that there is absolutely no alteration and there is no prima facie material to support the case regarding material alteration.

3. There can be no doubt that if the expert's evidence can lead to a competent opinion as to whether the first two digits of the figure “Rs.2,65,000/-” has been altered or not, that will be of great help in properly resolving the controversy before court. A photocopy of the cheque has been placed before me by the learned counsel for the respondent/complainant fairly. I shall not venture to express any opinion by the naked eye perusal of the photocopy of the cheque. At any rate, I am of opinion that the interests of justice will be better served by accepting the request of the petitioner to send the cheque to the expert for

examination. In coming to this conclusion, I take note of the very consistent stand from the date of sending the reply taken up by the accused. It cannot be lost sight of that at that point of time, the original cheque was available with the complainant and the defence could not have moulded by looking at the cheque. I am satisfied, in the facts and circumstances of this case, that the cheque deserves to be sent to the expert. The decision in **Francis v. Pradeep** (2004 (2) KLT 1080) is not authority for the proposition that merely because the signature in the cheque is admitted, it is not necessary in any case to forward the cheque to the expert for comparison. The facts of this case will have to be considered carefully. I have adverted to this aspect in the decision in **Bindu v. Sreekantan Nair** (2007 (1) KLT 525). The decision in **Francis v. Pradeep** (2004 (2) KLT 1080) cannot, in the facts and circumstances of this case, be a sufficient justification to refuse to send the cheque to the expert.

4. The learned counsel for the respondent/complainant submits that the attempt is unnecessary and is calculated to delay and protract the proceedings. It is easy for the court to see through such an attempt to delay and protract the

proceedings. If ultimately it were found that there is no material alteration and the cheque was issued for the due discharge of a legally enforceable debt/liability and the accused is culpably responsible under Sec.138 of the N.I. Act, an appropriate direction for payment of compensation including a direction to pay interests on the cheque amount from the date of dishonour to the date of payment can certainly be issued by the learned Magistrate as laid down by this Court in the decision reported in **Sathyan v. Yousu** (2006 (4) KLT 923). In cases like this if the delay in disposal is attributable to such unnecessary steps taken by the accused, certainly the courts are obliged in the interests of justice to issue such directions.

5. With the above observations, this Crl.M.C. is allowed. The impugned order is set aside. The learned Magistrate is directed to send the cheque to the expert for opinion.

(R. BASANT, JUDGE)

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